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**FISCAL IMPACT STATEMENT**

**LS 6781**

**BILL NUMBER:** HB 1354

**NOTE PREPARED:** Jan 9, 2006

**BILL AMENDED:**

**SUBJECT:** Film and Audio Production Tax Incentives.

**FIRST AUTHOR:** Rep. Lutz

**BILL STATUS:** As Introduced

**FIRST SPONSOR:**

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill provides that transactions involving tangible personal property are exempt from Sales Tax if the person acquiring the property acquires it for the person's direct use in the direct production of a motion picture or an audio production.

The bill also provides a state tax credit for certain expenditures made in Indiana for a motion picture or an audio production. The bill excludes obscene motion pictures from the definition of motion picture for purposes of the Sales Tax exemption and the tax credit.

**Effective Date:** January 1, 2007.

**Explanation of State Expenditures:** This bill will increase the administrative costs of the Department of State Revenue (DOR). The DOR will have to amend the Sales and Income Tax forms, as well as update computer software. It is estimated that the provisions of this bill can be implemented within the existing level of resources available to the DOR.

**Explanation of State Revenues:** *Summary:* The net revenue impact of these tax incentives depends on the extent that collections on taxable activities attributable to new motion picture and audio production in the state is less than or exceeds the tax incentives claimed. However, if the motion picture and audio production location or expansion would have occurred in the absence of the tax incentives, the net impact would be the total of the incentives.

*Sales Tax Exemption:* The loss in Sales Tax revenue from the exemption provided in the bill is expected to be

\$70,000 in FY 2007 because of the January 1, 2007, effective date. The loss of Sales Tax revenue in FY 2008 is estimated to be approximately \$180,000.

The bill provides that any tangible personal property purchased for direct use in the direct production or post production of a motion picture is exempt from Sales Tax. To receive the exemption, the purchaser must either:

- (1) be engaged in a new business activity; or
- (2) receive a determination from the Indiana Economic Development Corporation (IEDC) that the direct production or post production will take place in another state without the exemption.

The bill provides that "new business activity" means either of the following:

- (1) The initial advertising commercial production for a newly developed or created product, service, or advertiser.
- (2) Advertising commercial production for a product, service, or advertiser that is produced in Indiana at least 2 years since the previous date on which advertising commercial production for the product, service, or advertiser occurred in Indiana.

Sales Tax revenue is deposited in the: Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%).

*Motion Picture and Audio Production Credit:* The credit provided in the bill could reduce Individual Adjusted Gross Income Tax, Corporate Adjusted Gross Income Tax, Insurance Premiums Tax, and Financial Institutions Tax revenues by between \$250,000 and \$600,000 beginning in FY 2008. Since the tax credit begins in tax year 2007, the fiscal impact would begin in FY 2008.

The bill provides that a company may receive a tax credit equal to 25% of their qualified expenses. The bill defines qualified expenses as those incurred in the production of:

- (1) a feature length film;
- (2) a video;
- (3) a television pilot or series;
- (4) an advertising commercial;
- (5) a music video or an audio recording; or
- (6) a corporate production;

produced in Indiana for any combination of theatrical, television, or other media viewing. In order to receive the credit, the production project must also meet the definition of "new business activity". The IEDC can waive the new business activity requirement as provided in the bill.

The bill also provides that the qualified expense must include wages paid to Indiana residents and purchases from Indiana vendors. Also, the bill requires that the qualified expenses must exceed a certain percentage of the company's total expenditures. The percentages for a given year are as follows:

CALENDAR YEAR	PERCENTAGE
2007	30%
2008	30%
2009	40%
2010	50%
2011 and thereafter	60%

The IEDC has the ability, under the bill, to allow a credit if the expenditure percentage requirements are not

met. The bill provides that for each 1% the requirement is lowered, the percentage of the credit goes down 1% as well. For example, if the IEDC allows a credit in CY 2007 for company that has qualified expenses that are 25% of their total expenditures, that company will only be allowed a credit equal to 20% times the amount of the qualified expenses.

The bill further requires that to receive the credit for a feature film production, the qualified expenses must exceed \$300,000, and for an audio production the qualified expenses must exceed \$100,000. The bill allows the credit to be carried forward for nine years, but the credits may not be carried back or refunded.

*Transfer of Credits:* The bill provides that a taxpayer who qualifies for the Film and Audio Production Tax Credit for advertising commercial expenses may assign the credit to the extent that the credit exceeds the qualified taxpayer's tax liability. The bill allows the credit to be assigned only to the advertiser for whom the commercial was produced, or the advertising agency employed by the advertiser for whom the commercial was produced.

The bill would reduce state Adjusted Gross Income (AGI) Tax, Insurance Premiums Tax, and Financial Institutions Tax liabilities of individual and corporate taxpayers that obtain unused tax credits from other individual and corporate taxpayers. Assuming unused credit amounts would eventually be utilized, this change has no long-run fiscal impact. Rather, the change likely provides for more timely use of credits obtained by taxpayers whose tax liabilities are not sufficient to exhaust the credits in one year. The credit transfer provision could potentially lead to a short-term increase in the use of tax credits beginning in FY 2007 and FY 2008.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** Indiana Economic Development Corporation; Department of State Revenue.

**Local Agencies Affected:**

**Information Sources:** Economic Research Associates, *Economic Impact Analysis of Indiana's Film and Video Production Industry*, March 2003.

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